IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 7TH DECEMBER 2006 / 16TH AGRAHAYANA 1928

OP.No. 12468 of 2001(H)

PETITIONER:

K. SIVADAS, KANGATH HOUSE, PAPPADI, DHONI P.O.,
PALGHAT.

BY ADV. SRI.T.R.RAVI

RESPONDENT:

AKATHETHARA KSHEERA VYAVASAYA SAHAKARANA SANGHAM LTD.,
P 560 AKATHETHARA, PALGHAT, REP. BY ITS PRESIDENT

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 07/12/2006 THE COURT, ON THE SAME DAY, DELIVERED THE
FOLLOWING:

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF ENQUIRY REPORT DT. 18-10-1994.

EXT.P2 ORDER OF DISMISSAL DT. 20-1-1995.

EXT.P3 COMPLAINT DT. 2-2-1995.

EXT.P4 AWARD DT. 9-11-2000.

EXT.P5 LETTER DT.10-8-1994.

EXT.P6 ORDER DT. 22-6-1999 OF LABOUR COURT, KOZHIKODE.

[TRUE COPY]

P.S TO JUDGE.

S. Siri Jagan, J.

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O.P . No. 12468 of 2001

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Dated this, the 7th December, 2006.

J U D G M E N T

Workman in I.D. No. 50/94 before the Labour Court, Kozhikode, is the petitioner herein. He is challenging Ext. P4 award passed by the Labour Court in that I.D to the extent the same denies backwages and incidental benefits to the petitioner. The petitioner's contention is that the petitioner is not guilty of any of the misconducts alleged against him. He also would submit that there was no sufficient evidence in the enquiry to hold him guilty of the misconducts. The Labour Court has not adverted to this specific contention of the petitioner in so far as after finding that the enquiry was conducted validly and properly, the Labour Court straightaway went to the question of punishment, without deciding whether the findings in the enquiry was supported by valid evidence adduced in the enquiry. The petitioner therefore submits that Ext. P4 award to the extent it is challenged by him is liable to be set aside.

2. There is no appearance for the 1st respondent in the original petition.

3. Ext. P6 produced along with I.A.No. 17074/2006 is the preliminary order passed by the Labour Court in the I.D. The operative portion of the same is contained in paragraph 9 thereof, which reads thus:

> "9. The main allegation of the workman is that no sufficient opportunity was given to him to cross-examine the witnesses of the management and also to adduce evidence on his behalf. On going through Exts. M1, the file relating to the domestic enquiry, I find the above allegations baseless. All the witnesses of the management were elaborately cross-examined by the workman and the workman has examined 7 witnesses. Therefore, it cannot be said that no reasonable opportunity was afforded to the workman to cross-examine the witnesses of the management and to adduce evidence on his behalf. On going through Exts. M1 and m2, I am convinced that the Enquiry Officer has conducted the domestic enquiry in a fair and impartial

> manner and that he has complied with the principles of natural justice. That being so, it has to be held that the domestic enquiry conducted against the workman is valid and proper."

Thereafter, straightaway, the Labour Court went to the question as to the justifiability of the punishment of dismissal imposed on the workman. From Exts. P4 and P6, it is clear that the Labour Court has not entered into the intermediate process of considering whether the findings in the enquiry are supported by sufficient legal evidence adduced before the enquiry officer. As such, I am of opinion that the Labour Court has not exercised his jurisdiction vested in him properly and in the manner expected of him under law.

In the above circumstances, I set aside the award to the extent it denies backwages and incidental benefits to the petitioner-workman and remand the matter to the Labour Court for fresh consideration as to whether the findings in the enquiry are supported by legal evidence. I make it clear that this remand is for this limited purpose and even if the Labour Court again finds that the findings are supported by evidence the direction to reinstate the workman would stand and the only question that should be dealt with by the Labour Court shall be as to whether the petitioner is entitled to backwages also. The original petition is disposed of as above.

Sd/- S. Siri Jagan, Judge.

Tds/